water v. Schenk, 9 Wis. 160. And it is well established that judicial notice will be taken of the population of a town as shown by the United States census. *Chicago & A. R. R. Co. v. Baldridge*, 177 Ill. 229; *Page v. McLure*, 79 Vt. 83. In the same manner the results of a State census, *Denny v. State*, 144 Ind. 503; *State v. Dolan*, 93 Me. 467; or even a school census, *Kokes v. State*, 55 Nebr. 691; *Stratton v. Oregon City*, 35 Ore. 409, will be recognized.

HOMICIDE—MURDER—INTENT.—PEOPLE V. LOOSE, 92 N. E. 100 (N. Y.). —*Held*, that if a defendant, in an attempt to shoot his son, unintentionally killed his daughter, he was guilty of murder in the first degree.

The general rule is that one who kills another, mistaking him for a third person, whom he intended to kill, is guilty or innocent of the offense charged, the same as if the fatal act had killed the person intended. *Brown v. State*, 147 Ind. 28; *State v. Renfrow*, 111 Mo. 589; *McGee v. State*, 62 Miss. 172. It has been held that a shot fired at one person with the intent to wound or kill, carries with it the ingredient of malice no matter who may be the victim. *Wareham v. State*, 25 Ohio St. 601. And the claim of the defendant that he mistook the person shot for another with whom he had been on unfriendly terms, cannot lessen his guilt or change the degree of his crime. *Com. v. Eisenhower*, 181 Pa. St. 470. In a case where a person while engaged in a personal difficulty with another fires upon him and as the latter runs away, again fires, misses him, and kills a third person who is near by, he is guilty of murder and not involuntary manslaughter. *Durham v. State*, 70 Ga. 264. And in *State v. Levelle*, 34 S. C. 120, it was held that a person who in the attempt to take his own life with a deadly weapon, unintentionally takes the life of an innocent bystander, was guilty of murder. The English rule is that where one person kills another intending to kill a third person, it is necessary, in order to constitute the crime of murder in the first degree, to show that the accused intended to kill such third person and that such person was or might be supposed to be near the spot at about the time of the fatal deed. *Reg. v. Cleary*, 2 Fost. & F. 850. And it is the rule that where a person tries in a sudden heat and passion to kill one party, and accidentally kills another, he cannot be guilty of less than manslaughter. *Sims v. Com.*, 12 Ky. L. 215. However, where a party attempts to shoot another in self-defense and accidently kills a third party, such killing would be excusable and justifiable if the killing of the party intended would have been excusable and justifiable. *Pinder v. State*, 27 Fla. 370; *Butler v. State*, 92 Ga. 601. But self-defense is not available to relieve one from responsibility, who shoots and kills one person when he intends to kill another, unless the circumstances are such as to justify an ordinary reasonable and prudent man in believing himself in danger. *State v. Brown*, 4 Pen. (Del.) 120.

HOMICIDE—SELF-DEFENCE—RETREAT.—STATE V. BISSONETTE, 76 ATL. 288 (CONN.).—*Held*, that where one without fault is assaulted in his dwelling house, he need not retreat from his assailant, but he may resist the assault even to the extent of taking the life of the assailant when necessary.

The old rule was that a homicide was excusable when committed in self-defence only when the party killing had retreated as far as practicable or "to the wall." *Wharton, Crim. Law,* Sect. 486a; *Allen v. U. S.,* 164 U. S. 492; *People v. Constantino,* 153 N. Y. 24. This rule has, in modern times, however, been modified in many particulars. *Beard v. U. S.,* 158 U. S. 550; and now the general rule is that one, attacked while in the lawful pursuit of his business and in a place where he has a perfect right to be, may resist without retreat. *Erwin v. State,* 29 Ohio St. 186; *State v. Bartlett,* 170 Mo. 658. Accordingly, it is well established that the rule requiring retreat does not apply when a man is attacked in his own house. *State v. Bennett,* 128 Iowa 713; *Sloan v. Commonwealth,* 15 Ky. Law Rep. 437; *Kirk v. Ter.,* 10 Okla. 46. This is true whether or not the assailant is a trespasser. *People v. Newcomer,* 118 Cal. 263. It is true when the accused has been attacked in the office where he transacts his business; *Cary v. State,* 76 Ala. 8; and when the altercation has been between partners in their place of business. *Jones v. State,* 76 Ala. 78. Moreover, this rule making it unnecessary for a man to retreat when attacked in his own house is usually extended to include the curtilage within which his house is situated. *People v. Kuehn,* 93 Mich. 619; *Beard v. U. S.,* 158 U. S. 550; *Contra; Brinkley v. State,* 89 Ala. 34. The reasons for establishing the rule that a man need not retreat when on his own premises are variously stated. Some cases say that it is because a man's house is his castle and he has the right to protect it from intrusion as well as his body from harm. *People v. Coughlin,* 67 Mich. 466. Others say that when a man is in his own house he must be presumed to be "at the wall." *Palmer v. State,* 9 Wyo. 40.

LIMITATION OF ACTIONS—PAYMENT ON BARRED NOTE—REVIVAL OF MORTGAGE.—CLARK V. GRANT, 109 PAC. 234 (OKLA.).—*Held,* that where a note and a mortgage given to secure it are once barred, payment of interest on the note revives not only the note, but the mortgage, so far as affects the interest of the payers.

It is a general rule that where a debt is secured by a lien or other security and, having been barred by the Statute of Limitations, is revived in any way, the benefit of the security is revived also. *McElwee v. McElwee,* 97 Tenn. 649. And, as a special application of this rule, it is almost universally held that, where the security is a mortgage, that too is revived when the bar of the statute on the debt is removed. *Hough v. Bailey,* 32 Conn. 288; *Kraft v. Holzman,* 206 Ill. 548; *MacMillan v. Clements,* 33 Ind. App. 120; *contra; Wells v. Harter,* 56 Cal. 342. This is said to be because such a mortgage is merely an incident of the debt. *Allen v. O'Donald,* 28 Fed. 346; *Perkins v. Stone,* 23 Tex. 561. It is to be noted, however, that a mortgage differs from other forms of security in that actions for the foreclosure of mortgages have their own statutes of limitation, differing from the statutes by which actions on debt are barred. Accordingly, the date on which the debt is revived fixes the new period from which not only the limitation applicable to the debt, but also that applicable to the mortgage is to be computed. *Hughes v. Thomas,* 131 Wis. 315. When the land mortgaged has been transferred to a third